

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANN CROPPER,

Plaintiff(s),

V.

WAL-MART STORES, INC.,

Defendant(s).

Case No.: 2:19-cv-00629-JCM-NJK

Order

[Docket Nos. 31, 32]

Pending before the Court is Defendant's motion for protective order. Docket No. 31.

Plaintiff filed a response in opposition, and Defendant filed a reply. Docket Nos. 34, 35. The

motion is properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed

below, the motion for protective order is **DENIED**.¹

“A party who wants to depose a person by oral questions must give reasonable written notice to every other party.” Fed. R. Civ. P. 30(b)(1). What constitutes “reasonable” notice is determined based on the circumstances of each case, taking into account factors such as the need for preparation before the deposition. *See, e.g., Paul v. Winco Holdings, Inc.*, 249 F.R.D. 643, 656 (D. Id. 2008) (citing *in re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 320, 327 (N.D. Ill. 2005)). In general, the party seeking to avoid discovery bears the burden of persuasion. *Blankenship v.*

¹ Defendant also filed a motion for relief from the dispositive motion deadline, Docket No. 32, which is **DENIED** as moot in light of the ruling made herein.

1 *Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). More particularly, a party will be permitted to
 2 avoid a deposition in its entirety only upon making a “strong showing.” *Id.*

3 This case presents a close question. The subject deposition notice appears on its face to be
 4 untimely. On Friday, April 24, 2020, Plaintiff served a notice for a Rule 30(b)(6) deposition to be
 5 conducted for Monday, May 4, 2020. Docket No. 31-3 at 10. Hence, the deposition notice
 6 provided five business days’ notice. Moreover, Plaintiff seeks testimony from an appropriate
 7 corporate representative on 28 topics. Especially given the preparation necessary for such a
 8 corporate deposition, *e.g.*, *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534, 539
 9 (D. Nev. 2008), the notice that Plaintiff provided does not appear to be reasonable.

10 On the other hand, counsel and their staff were coordinating deposition scheduling during
 11 this period given the upcoming discovery cutoff and complications arising from the COVID-19
 12 pandemic. On April 14, 2020, a staff-person for defense counsel specifically offered May 4, 2020,
 13 as a date for the Rule 30(b)(6) deposition in question. Docket No. 34-10 at 1. This Court has long
 14 prioritized common-sense cooperation in scheduling depositions, *see, e.g.*, *Olesczuk v. Citizens*
 15 *One Home Loans*, 2016 U.S. Dist. Lexis 153342, at *5-6 (D. Nev. Nov. 4, 2016), which is what
 16 appears to have been happening here in the background. The exact contours of the deposition
 17 topics may have been somewhat murky as of April 14, 2020, and a compelling reason has not been
 18 advanced why the written notice was not served for another 10 days. Nonetheless, it seems unduly
 19 harsh to disallow a deposition in its entirety in the circumstances of this case when that deposition
 20 was set on the date that had been volunteered to accommodate competing scheduling demands
 21 during the COVID-19 pandemic.² Moreover, at this stage, Defendant has now had additional time
 22 to prepare for the deposition in question given the pendency of the instant motion practice and the
 23 previous order vacating the deposition as set.

24 In the interest of having this case decided on its merits and in the interest of justice, the
 25 best course is for the Rule 30(b)(6) deposition to take place. The parties must meet and confer on
 26

27 ² The Court is also leery of completely prohibiting a deposition when defense counsel
 28 appears to have refused to engage in a rule-compliant meet and confer on this dispute. *See* Docket
 No. 34-13 at 2; Docket No. 34-14 at 1; *see also* Local Rule IA 1-3(f) (making clear that a proper
 meet and confer requires an in-person, telephonic, or video conference).

1 a new deposition date, which must occur before June 15, 2020.³ The dispositive motion deadline
2 is extended to July 15, 2020, and the joint proposed pretrial order is extended to August 14, 2020
3 (or 30 days after resolution of dispositive motions). **GIVEN THE PREVIOUS EXTENSIONS**

4 **IN THIS CASE, THESE DEADLINES ARE FIRM.**

5 For the reasons stated above, the motion for protective order is **DENIED**.

6 IT IS SO ORDERED.

7 Dated: May 13, 2020

8 
9 Nancy J. Koppe
United States Magistrate Judge

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³ Discovery remains closed except with respect to this deposition.